

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	X	
	:	
SCOTT POWERS,	:	
	:	
	:	20 Civ. 2625 (LGS)
	:	
-against-	:	<u>ORDER</u>
	:	
MEMORIAL SLOAN KETTERING CANCER	:	
CENTER, et al.,	:	
	:	
	X	
-----		

LORNA G. SCHOFIELD, District Judge:

WHEREAS, a conference was held on January 11, 2023. For the reasons discussed at the conference, it is hereby

**ORDERED** that the jury trial in this case is **RESCHEDULED** to begin on **March 29, 2023, at 9:45 A.M.** It is further

**ORDERED** that the Court has a strong preference for live testimony but will permit deposition testimony to be presented in a parties' direct case if the witness is unavailable to testify at trial, except that any witness may be impeached on cross-examination with his own prior testimony. It is further

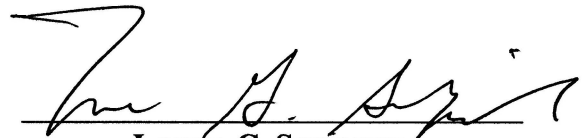
**ORDERED** that, in the Final Pretrial Order, for each witness proposed to appear solely by prior testimony, the parties shall provide (1) the name of the witness, (2) his or her title or role, (3) a summary of the proffered testimony and (4) whether the witness is available to testify live in the courtroom or by video, and, if not, why he or she cannot be compelled to do so. It is further

**ORDERED** that for each such witness who will appear solely by prior testimony, **at least two trial days before introducing that testimony**, the parties shall submit a joint document with their respective deposition designations, counter-designations and objections in the following format: for each witness, submit the relevant pages of the deposition testimony with page and line

numbers, consecutively paginated, regardless of which party is proposing the testimony; the text shall be highlighted in different colors or otherwise marked to clearly identify and distinguish each party's respective designations (e.g., Plaintiff's designations and counter-designations in blue font, and Defendants' in red; or in italics and non-italics respectively). Objections shall be noted in the margin directly adjacent to the testimony at issue in the same identifying font associated with the objecting party. (e.g. Plaintiff's designations in blue font, and Defendants' adjacent objection in red font). Objections shall be indicated with a Rule number and/or a descriptive word or phrase. Any objections not made shall be deemed waived. The parties shall submit such deposition excerpts as a flattened PDF. At the same time, the parties shall also submit a short introduction for each witness to be read to the jury, providing the witness's name, relevant position and other brief background information. That information will be deemed stipulated and a part of the record and need not be repeated in the deposition testimony. It is further

**ORDERED** that the parties shall attempt in good faith to resolve this case prior to trial through an additional round of settlement discussions. The Court has identified the Hon. Donald P. O'Connell (Ret.) as a potential mediator who is highly regarded and with experience in medical malpractice cases. The parties shall contact Judge O'Connell and any other mutually-agreeable mediators whom they have identified, and promptly schedule a mediation in light of the trial date in this matter. The parties shall file a joint status letter regarding their efforts by **Thursday, January 19, 2023**, in lieu of the letter ordered at the conference.

Dated: January 12, 2023  
New York, New York

  
**LORNA G. SCHOFIELD**  
**UNITED STATES DISTRICT JUDGE**